

**GOVERNMENT OF THE VIRGIN ISLANDS
OF THE UNITED STATES**

PUBLIC SERVICES COMMISSION

IN THE MATTER OF THE VIRGIN ISLANDS WATER
AND POWER AUTHORITY PETITION FOR ELECTRIC
SYSTEM BASE RATE RELIEF

PSC Docket No. 678

WAPA PROPOSED FINDINGS OF FACT AND CONCLUSIONS

The Virgin Islands Water and Power Authority, by and through the undersigned counsel hereby submits Proposed Findings of Fact and Conclusions to the Hearing Examiner.

Proposed Findings Of Fact

1. The Virgin Islands Water and Power Authority (“WAPA”) is a public corporation and autonomous governmental instrumentality created for the purpose of developing and providing water and electric power services for the people of the Virgin Islands. 30 V.I.C. §§ 103, 105.
2. When the Legislature created WAPA, it expressly provided it with its own Governing Board for its management. 30 V.I.C. §§ 103, 104. By doing so, the Legislature clearly intended that it would be the responsibility of WAPA's Board, not the Public Services Commission (“PSC”), to establish and implement WAPA's managerial decisions whilst subjecting WAPA's rates to the PSC's jurisdiction. *Virgin Islands Public Services Commission v. Virgin Islands Water and Power*, 49 V.I. 478 (V.I.S.C. 2008).
3. The PSC's power over WAPA is limited solely to setting WAPA's rates. *Virgin Islands Public Services Commission v. Virgin Islands Water and Power*, D. Ct. St. Croix Civil No. 77-110 (June 17, 1977) (Judge Young); *Virgin Islands Water and Power Authority v.*

Virgin Islands Public Services Commission, Sup. Ct. St. T Civil No. 564/2003 (January 8, 2007) (Judge Ross); *Virgin Islands Public Services Commission v. Virgin Islands Water and Power*, 49 V.I. 478 (V.I.S.C. 2008); *Virgin Islands Water and Power Authority v. Virgin Islands Public Services Commission*, 54 V.I. 132 (Sup. Ct. 2010); *Virgin Islands Public Services Commission v. Virgin Islands Water and Power*, 56 V.I. 508 (V.I.S.C. 2012).

4. As the Virgin Islands Supreme Court has held, WAPA retains the autonomy granted to it by Virgin Islands Code, Title 30, section 121, with the exception of setting its rates. The section provides:

§ 121. Lack of jurisdiction of other agencies

No officer, board, commission, department or other agency or political subdivision of the Virgin Islands shall have jurisdiction over the Authority in the management and control of its properties and facilities, or any power over the regulation of rates, fees, rentals and other charges to be fixed, revised and collected by the Authority, or any power to require a certificate of convenience or necessity, license, consent, or other authorization in order that the Authority may acquire, lease, own and operate, construct, maintain, improve, extend or enlarge any facility.

5. WAPA seeks a base rate increase upon the expiration or termination of its Leased Generation Surcharge and a corresponding reduction in LEAC rates. It asserts that this is in the long-term best interest of the Territory and the owner-customers of the utility.
Exhibit HH., Kupfer Opening Testimony. Oct. 22 Tr.p.41.
6. The provision of reliable and affordable power is a critically essential component of the economic viability of the Virgin Islands. Starving WAPA of the cash resources it requires to conduct basic operations and implement system improvements is not a prudent solution for the Territory. It needs to be authorized to charge base rates that cover its current operating expenses and create sufficient liquidity to retain the

confidence of the financial markets. *Governor's Memorandum dated October 24, 2019, p. 1.*

7. The last permanent base rates were approved by the PSC in February of 2017 based on projected revenues and expenses for fiscal year 2017. Fiscal year 2017 ended on June 30, 2017 and was the last fiscal year before the impact of devastating hurricanes Irma and Maria in September 2017. *Oct. 22 Tr.p.41.*
8. The main determining factors of a rate increase are projected revenues and expenses. Fiscal year 2020 sales are forecasted by WAPA to be 523-megawatt hours, which is in line with sales for Fiscal year 2019. Fiscal year 2017 projected sales, the basis for the last approved permanent base rates were forecasted to be 641-megawatt hours. Fiscal year 2020 sales are projected to be 18.6 percent lower than the sales used to determine WAPA's last approved permanent base rates. The Authority believes that the majority of these lower sales are due to the hurricanes of 2017 and their continued impact on the economy of the U.S. Virgin Islands. At its currently approved permanent base rates, the Authority projects revenues of \$119 million for fiscal year 2020. This is \$24 million lower than the revenues generated in WAPA's last approved permanent rate case. *Oct. 22 Tr.p.42-43; see also Exhibit F (Projected Revenues and Expenses) and Oct. 22 Tr.p. 65-67, Exhibit L (Post Storm Generation Trends).*
9. WAPA has agreed that its requested base rate increase should be approved only upon the expiration or termination of the Leased Generator Surcharge. *Exhibit HH., Kupfer Opening Testimony.* This provides an immediate offset to the overall customer rates of 3.08 cents per kilowatt-hour. WAPA is also currently petitioning in Docket 289 and in this docket for a simultaneous reduction in the fuel surcharge (LEAC). When this

reduction is compared to the requested base rate increase the actual increase to overall customer electric rates will be nominal. *Oct. 22 Tr. p. 44.* As much as the Government would like to avoid any rate increases, that is a reality that the Government and WAPA can live with. *Governor's Memorandum dated October 24, 2019, p. 1.*

10. As a result of federal funding, there will also be an unprecedented investment of at least \$600 million in capital investment in WAPA over the next five years. These funds have been made available through the federal disaster recovery programs at Housing and Urban Renewal ("HUD") and the Federal Emergency Management Agency ("FEMA"). This investment includes funding for new generators that will improve overall power production efficiency and result in significant fuel savings. It also includes funding for the construction of new solar and wind generation facilities. Moving WAPA to 100% propane use, installing more efficient generators, and building utility-owned renewable energy systems will result in further reductions in the LEAC. *Governor's Memorandum dated October 24, 2019, p. 1. Exhibit HH., Kupfer Opening Testimony.*

11. The Government has taken bold measures to remedy this situation with recent payments to satisfy outstanding obligations to WAPA of approximately \$26 million. However, the utility remains in a cash flow crisis. The requested increase in the base rate, pending before the PSC since December 2018, would greatly enhance the Authority's ability to refinance certain debts, VITOL being primary, by improving its cash flow to achieve compliance with the rate covenants of the Bond Resolution that authorized the issuance of currently outstanding debt. Once refinanced, there will be an immediate reduction in WAPA's expenditures and grounds for a further rate reduction. Refinancing the

utility's debt is critically important at this juncture. *Governor's Memorandum dated October 24, 2019, p. 2.*

12. The Government of the Virgin Islands supports WAPA's requested base rate increase.

The Governor has stated:

"Given all circumstances, the Virgin Islands Water and Power Authority and its ratepayers stand to benefit from the timely and affirmative action on its petition for Electric System Rate Relief. On behalf of the Government, I humbly request that the PSC facilitate this necessary step to be able to enjoy the progress that we are building into VIWAPA through our unprecedented level of investment."

Governor's Memorandum dated October 24, 2019, p. 2

13. In 2012, Hovensa closed its refinery and WAPA as a result lost its ability to procure fuel oil at a price below its market price. *Exhibit HH, Kupfer Opening Testimony.*

14. Concurrently, the Alpine waste to energy project supported by WAPA and approved by the PSC failed to obtain necessary legislative approval of leases on land on which to locate its facilities on St. Thomas and St. Croix. *Exhibits C and D.*

15. In an effort to obtain an alternative fuel source that was less expensive than fuel oil at the market price, and cleaner, WAPA negotiated an agreement dated July 25, 2013 with Vitol Virgin Islands Corp. ("Vitol") to build propane facilities on St. Thomas and on St. Croix in order to supply WAPA with propane. *PSC Exhibit 31.* In addition, seven of WAPA's No. 2 fuel oil generators were to be converted to use propane as a primary source of fuel. *Exhibit HH, PSC Exhibit 31.*

16. The conversion to propane was expected to reduce fuel costs significantly, especially after WAPA paid over the term of the Agreement for the cost of the infrastructure built by Vitol.

The use of the propane was also expected to reduce significantly WAPA's emissions.
Exhibit HH, Kupfer Opening Testimony.

17. WAPA implemented a very aggressive construction schedule to deliver the benefits of the propane conversion to the Territory as soon as possible. Its intention was to reduce by two years the time to complete the project. To accomplish this goal, the Project proceeded with Front End Engineering and Design (FEED) in parallel with procurement and vendor selection and contracting. *PSC Exhibit 31.* Toward this end, Vitol expedited the procurement of long-lead time items and implemented other time-saving measures to compensate for normal permitting and construction delays, including non-availability of construction materials and prolonged vendor negotiations.

18. However, the Agreement contemplated from its inception that certain costs were subject to increase based on certain circumstances. Several provisions of the Agreement contemplated their occurrence. Some of the cost increases were foreseen and some were unanticipated.

19. Section 5.01 of the Agreement provided:

(a) Commencing on Substantial Completion until the expiration of the Initial Contract Term, WAPA shall pay to Seller a fixed fee not to exceed \$2,480,000 per month (the “**Monthly Infrastructure Recovery Fee**”) as payment for the amortized costs incurred by Seller in connection with the performance of the Work, as may be adjusted as detailed below for all amounts paid to GE pursuant to the GE Repowering Agreement (“Revised GE Expenses”) and based on **estimated total infrastructure** costs (including estimated GE expenses of \$19,000,000) in an amount not to exceed \$87,000,000 (**as ultimately determined in the Project Budget**, the “Infrastructure Recovery Fee”) as set forth in the *projected project budget* attached as *Exhibit L* (the “Project Budget”).

(b) The Infrastructure Recovery Fee shall be inclusive of Seller's corporate income taxes, payroll taxes and withholding taxes applicable in the USVI.

(c) The Parties shall agree on any necessary increase or decrease of the Infrastructure Recovery Fee resulting from completion of the Studies (and/or to account for any Revised GE Expenses as set forth above), and the Monthly Infrastructure Recovery Fee shall be reduced or increased, as applicable, by Three US Dollars (US\$3) for every One Hundred US Dollars (US\$100) reduction or increase in the Project Budget. Except for the Revised GE Expenses, the only aspects of the Project Budget which are subject to potential increase are (a) the costs of upgrading WAPA's docks on St. Thomas or other jetty work on St. Thomas as determined by the Studies, and (b) the increased costs relating to any Change Order requested by WAPA after the execution hereof or otherwise provided pursuant to Sections 7.09 or 7.15. PSC Exhibit 31.

20. Pursuant to Section 1.01 of the Agreement, "Studies" means those studies, surveys and other information set forth in Sections 8.01(a)(i) through 8.01(a)(v). The costs addressed in Section 5.01 were costs that were foreseen but their amounts were unknown at the time the Agreement was executed. *PSC Exhibit 31.*

21. In addition, Section 8.01(a) of the Agreement recognized and confirms that WAPA shall be responsible for the anticipated, foreseen costs. It provides:

Seller shall promptly following the execution hereof, procure:

(i) The FEED Study; provided that the Parties will mutually agree on how to implement any necessary modifications to the existing Plants as a result of the FEED Study and **WAPA shall be responsible for the costs, if any, associated with such modifications; PSC Exhibit 31.**

22. In addition, Section 7.15 of the Agreement further underscores that the cost of addressing unanticipated conditions was a WAPA expense. It states in relevant part:

If any conditions exist or arise at the Project Sites or other areas where the Delivery Infrastructure, Offshore Infrastructure, Modified Facilities or Conversion-Related Systems are to be located (including Hazardous Materials, environmental conditions, undisclosed soil conditions, pollution or archeological findings) **of which Seller was not aware on the date of this Contract or could not reasonably be expected** to anticipate based on the Studies or inspection described in the preceding sentence, and such conditions

involve the incurrence by Seller of any material expenses to correct or accommodate such conditions (hereinafter, “Unanticipated Condition”), **Seller shall submit a request for approval of a Change Order (including payment of the related expenses to WAPA therefor), which approval shall not be unreasonably withheld, conditioned or delayed.** *PSC Exhibit 31.*

23. Further, in the event of a Force Majeure, Section 14.01 (c) provides

(c)If Seller’s costs with respect to the Infrastructure Services or the O&M Fee, but not with respect to the LPG Supply Services, increase due to a Force Majeure event despite Seller’s Reasonable Efforts to mitigate any such increases, **the affected price component of this Contract (including the O&M Fee or the Infrastructure Recovery Fee) shall be increased by the sum of the actual and reasonably substantiated costs incurred by Seller** (including any costs incurred by Seller in connection with the mitigation measures implemented by Seller and any demobilization and re-mobilization costs). *PSC Exhibit 31.*

24. In short, the anticipated cost to WAPA of the infrastructure and therefore its ratepayers

was \$87 million at the time the Agreement was signed but it was anticipated to rise as a result of studies yet to be completed and unknown unanticipated conditions. As the project work was done, the foreseen and unforeseen costs rose to \$160 million. Those costs have been audited and are allowable as revenue requirements because they are costs prudently incurred in order to provide WAPA with a significantly cleaner and cheaper fuel source after the closure of Hovensa and the loss of its fuel at a discounted price. *See Exhibits CC.*

25. Initially, the Agreement was for seven years but later became a 10-year Agreement in an effort by WAPA, with Vitol’s cooperation, to reduce the rate impact of the increased monthly infrastructure cost. *PSC Exhibit 31*

26. Adjustments to the project cost and schedule, which were all contemplated by the original contract, also resulted primarily from the unavoidable expansion of the project scope. The expansion in scope relates to various aspects of permitting and construction that were

unforeseen at the time the project was launched. Major reasons for these adjustments include:

- Extended work on the design, procurement, and installation of the necessary resources to upgrade the Authority's existing fire protection, controls, and systems for the safe use of propane.
- Undocumented soil conditions and underground obstacles on St. Croix.
- The complexity of permitting, contracting, demolishing, and disposing of structures with lead-based paint.
- Greater challenges than anticipated in coordinating the conversion of the power plants to safely burn propane while simultaneously operating power generating facilities to meet daily electricity demand.
- The reality of global sourcing of all the materials and equipment for the Project.
- Adverse weather conditions in the early phases of the Project.
- Compliance with additional regulatory requirements to assure the safety and the security of the marine aspect of the Project, including necessary redesigns to convert the anticipated anchoring program to a full-fledged mooring solution.

PSC Exhibit 31.

27. The approach utilized in this project with respect to change orders and adjustments is not new or uncommon for infrastructure projects of this type and scale. The procedures for change orders and accompanying adjustments in cost was a deliberative, transparent, highly structured, and fully documented process. *PSC Exhibit 31: Oct. 22 Tr. p. 101-102.* Vitol would bid and secure subcontractors for various aspects of the work. WAPA project personnel would be made aware of the process and selection in each instance. Based on the preliminary designs, costs were developed and subsequently adjusted, where necessary, to correspond with the final design/engineering and work scope. *PSC Exhibit 31.* At that point, Vitol was required by the Agreement to advise WAPA of the rationale for the proposed adjustment, and WAPA would make the decision on whether or not to implement the proposed adjustments if they were unavoidable and/or necessary to enhance safety, security, or compliance with regulatory requirements. *Id.* Vitol would thereafter implement the same. *PSC Exhibit 31*

28. On November 20, 2014, Vitol and WAPA amended the Agreement and extended from seven years to ten years the period in which WAPA would pay Vitol in full the Infrastructure Recovery Fee. The amendment also reduced WAPA's obligation to pay interest (profit to Vitol) under Sections 7.10 and 8.01 from ten percent to eight percent. *PSC Exhibit 31.*
29. The Agreement paved the way for the advent of cleaner and cheaper fuel. Despite this, the passage of time, inflation and the occurrence of adverse circumstances have given rise to a need for a base rate increase. *Exhibit HH.*
30. The last time a base rate increase was approved by the PSC was in February 2017, based on WAPA's projected revenues and expenses for FY2017, which ended on June 30, 2017. It was the last fiscal year before the impact of devastating Hurricanes Irma and Maria in September 2017.
31. The Authority is sympathetic to the impact that rate increases have on our community and its residents and businesses. It has made every attempt to minimize the requested rate increase. *Oct. 22. Tr. p. 41.* When coupled with the LEAC petition currently before the PSC and the elimination of its temporary Leased Generation Surcharge, the proposed increase will not significantly impact the overall rates paid by WAPA customer-owners. *Exhibit HH. Oct. 22 Tr. p. 41-44.*
32. The increase is needed because the Authority's currently approved base rates do not provide enough revenues to cover its expenditures. These expenditures include payroll, routine operating expenses, maintenance, contracted services and debt service. *Oct. 22 Tr. p. 41-42.*
33. FY2020 sales are forecasted to be 523 MWhr and are in line with sales for FY2019. *Exhibit HH. Oct. 22 Tr. p. 42*

34. FY2017 projected sales, the basis for the last approved Permanent Base Rates, were forecasted to be 641 MWHr. *Oct. 22 Tr. p. 43*. FY2020 sales are projected to be 18.6% lower than sales used to determine WAPA's last approved base rate adjustment. *Oct. 22 Tr. p. 43*. The Authority believes that the majority of these lower sales are due to the Hurricanes of 2017 and their continued impact on the economy of the U.S. Virgin Islands. *Id.*
35. The Authority projects revenues of \$119 million for FY2020. This is \$24 million lower than the revenues generated by WAPA's last approved permanent base rate increase. *Oct. 22 Tr. p. 46*.
36. Contracted Expenses include fixed and defined services provided by third-party vendors and debt service. Major third-party vendors include Vitol for propane, Glencore for 2 Oil, APR Energy for leased generators in St. Thomas and Aggreko for leased generators in St. Croix. Failure to pay a third-party vendor will result in that vendor suspending or canceling their contract with the Authority. *Oct. 22 Tr. p. 45*.
37. FY2020 Contracted Expenses are forecast to be \$90.9 million. This is \$18.2 million higher than the Contracted Expenses included in the last approved WAPA base rate case. This increase is primarily due to an increase in leased generation costs of \$12.9 million, \$5.8 million in Vitol costs and \$4.4 million in debt service. *Oct. 22 Tr. p. 45*.
38. The combination of a Revenue shortfall of \$24.2 million and an expenditure increase of \$17.1 million results in a deficit of \$41.3 million as compared to the last approved Base Rate Case. *Oct. Tr. p. 46*.
39. Because WAPA is sensitive to the impact of rate increases on the Virgin Islands' economy and its residents, it is willing to forgo internally generated funding to cover

miscellaneous capital projects, which includes major maintenance to its existing gas turbines, and, therefore, is requesting a \$30.4 million increase in rates to eliminate its deficit. *Rate Case. Oct. Tr. p. 46.*

40. On average, this represents an increase of approximately 6 C/KW hr. However, approval of WAPA's current LEAC petition and the simultaneous elimination of the 3 C/KW hr Leased Generator Surcharge, will mean that overall rates will not be significantly impacted.

41. The failure to receive the rate relief sought will mean that WAPA's revenues will not cover its expenditure needs. This would likely result in its inability to pay one of its third-party service providers and the consequent suspension of services by that third-party provider. Vitol is the vendor that is applying the most pressure to stay current and deal with the significant amounts owed to it. A suspension of propane deliveries would require the Authority to switch back to 2 Oil for all its generating needs. This would result in an increase in the LEAC from its currently approved 19 C/KW hr to 30 C/KW hr. In terms of overall rates, customers would see an increase of approximately 7 C/KW hr, or about \$28 per month for an average residential customer-owner. *Oct. 22 Tr. p.46-47.* The Authority understands the impact that such a significant rate increase would have on its customers and the Territory and its requested base rate increase coupled with a LEAC decrease is designed to minimize such future adverse effects. *Id.*

42. The failure to receive the rate relief sought will also impact WAPA's ability to complete the financing for the recently commissioned Wartsila generators and a potential re-financing of the LPG Facilities with a private investor. The re-financing of the LPG facilities could lower rates by 2 C/KW hr. Furthermore, it is operating new Wartsila

generators under a forbearance agreement with Wartsila, the terms of which require WAPA to complete this financing by December 31, 2019. *Oct. 22 Tr. p.47-48.*

43. Lastly, the failure to receive the rate relief sought, if any of the scenarios outlined above become a reality, will result in a continued failure to satisfy the rate covenants of the Bond Resolution and likely lead to further downgrades of WAPA by the financial rating agencies. *Oct. 22 Tr. p.48.*

44. Although not directly tied to WAPA's base rate request, the plan's success is dependent on improving the Authority's financial stability. Without financial stability, it is likely that it will have difficulty attracting bidders to implement projects included in the plan. *Oct. 22 Tr. p. 48.* Additionally, continued financial instability would bring into question WAPA's capacity to manage the federal grants that have been awarded or may be awarded to it. *Id.* But if the transformation plan is implemented, WAPA will cease being a utility with extreme exposure to catastrophic storm events, and a utility with little use of renewable energy resources, and inefficient and unreliable generation. *Oct. 22 Tr. p. 49-50.* Instead it will become a utility that has a hardened transmission and distribution, significant use of renewable energy, and efficient and reliable generation. WAPA's transformation plan has three key elements: resilience, greater renewable penetration and improved generation. *Oct. 22 Tr. p.48-49.*

45. The first key component is mitigation projects funded by FEMA and HUD. HUD will be providing the 10% local match. FEMA has approved over \$600 million in projects to harden its transmission and distribution system. *See e.g. Exhibit S and Y. Oct. 22 Tr. p.48-49.* This includes \$400 million for underground circuits to approximately 50% of its customers. Composite poles, rated to withstand 200 MPH winds, will be installed for a

significant portion of circuits that will remain overhead. The approved projects also include substation upgrades, AMI hardening and submarine cables for improved resiliency. The Authority is progressing and is currently spending money in all of these areas – engineering for underground projects is underway, the composite pole project is proceeding throughout the territory, with Water Island having recently been completed. Additionally, the Authority recently started construction of a concrete reinforced substation to replace its East End substation in St. Thomas. *Oct. 22 Tr. p.49-50.*

46. The second main component of WAPA’s transformation plan involves greater use of renewable energy. *Oct. 22 Tr. p.50.* Currently, the Authority buys solar power under a purchase price agreement with BMR Energy in St. Croix. This solar farm produces about 600,000 KWhr of electricity each month. *Id.* This represents only about 1 ½ percent of the electricity produced by the Authority each month. Using HUD grants, the Authority will significantly increase the use of utility scale, WAPA-owned solar and wind generation. *Id.* Batteries will be included in these projects to lessen the impact the swing in electricity from renewables can have on WAPA’s grid. The Authority is currently in the application process to obtain funding for the installation of 28 MWs of utility owned solar, along with a large battery energy storage system, for St Croix. *Id.* The Authority has also reached agreement with a private entity to re-build the Donoe Solar Farm with an increased capacity of 6 MW. Additional grant projects are in the pipeline and are at varying stages of development. *Oct. 22 Tr. p.50-51*

47. Through the reduction in fuel usage and less reliance on costly power purchase agreements, the Authority will be in a position to make steady progress toward providing its services at rates that are more stable and affordable. *Oct. 22 Tr. p.52.*

48. The third component of WAPA's transformation plan is to complete the upgrades of its power plants. The Authority's 2016 Integrated Resource Plan (IRP) called for completely upgrading both its power plants with smaller, more efficient, more reliable and renewable compatible generators that will use clean burning propane as the primary fuel. *Oct. 22 Tr. p.50*. Recently, WAPA commissioned 21 MW of new WAPA-owned generation in St. Thomas and 20 MW of new leased generation in St. Croix. *Id.* These generators are of the type that were called for in its 2016 IR. That means that today, over 50% of WAPA's electrical generation has been upgraded as promised. *Oct. 22 Tr. p.52*. WAPA will complete the upgrade of both of its plants using HUD funds and just recently WAPA released an RFP for up to 40 MW of new generation and Battery Storage for St. Thomas that will be funded by HUD. *I Oct. 22 Tr. p.52, 109-110*. It is expected that these new generators can be in place by the end of next year and they will allow WAPA to reduce rates by an estimated 5 C/KWhr. *Oct. 22 Tr. p.52*.
49. The Authority recognizes the need to pull in additional resources to help manage and monitor the timely and accurate execution of its transformation plan. *Oct. 22 Tr. p.53*. As such, it will rely on external project and construction management experts and has already begun preparing RFPs for Project Management Services contracts. *Id.* From a portfolio management perspective the Authority is receiving assistance from the New York Power Authority to develop a five-year execution plan which identifies all capital projects, cost estimates, execution timelines, and funding sources. *Oct. 22 Tr. p.52-54*.
50. Additionally, in order to successfully implement such a large set of complex and interrelated projects, the Authority recognizes the importance of a reliable design which optimizes the synergistic benefits of all of the system components. Through the

Department of Energy, the Authority has access to the National Renewable Energy Laboratory (NREL). NREL, utilizing sophisticated state of the art technology, has the capability of modeling these proposed projects in order to validate their effectiveness and viability prior to implementation. Henceforth, before a shovel breaks ground, all stakeholders can be assured that the projects will function as anticipated and will result in realization of the intended benefits. *Oct. 22 Tr. p.53*. Additionally, assistance from the New York Power Authority, and other consultation and engineering service experts will help to ensure that WAPA project designs are well thought out and properly vetted prior to implementation. *Id.*

51. The Authority is currently developing a revised IRP, in conjunction with the above-named technical resources, and it is expected to be available in the 4th quarter of this year. This IRP will provide complete definition of the renewable and generation plan for the territory. *Oct. 22 Tr. p.53-54*.
52. It is uncontradicted that WAPA's plan for reducing electric rates and providing reliable resilient service is the soundest plan for lowering its rates.
53. The Governor of the Virgin Islands is the titular head of the Government of which the PSC is a part.
54. By law, the PSC is administratively within the executive branch of the Government. *3 V.I.C. Section 273(a)*. Members of the PSC are nominated by the Governor and confirmed by the Legislature. They may be removed from office by the Governor for cause. *3 V.I.C. Section 273(e)*.
55. The Governor has submitted a Memorandum dated October 24, 2019 which has been accepted by the Hearing Examiner in this docket as another public comment.

56. However, it is not simply a public comment. Characterizing it as public comment is to ignore the Governor's status as the titular head of the Government of the Virgin Islands of which the PSC is a part and to whose review its members are subject.
57. The Governor has risked his political standing to publicly support the plan presented by the Authority.
58. His Memorandum is an expression of public policy that contains his vision for his administration and the Territory, and his approval of PSC actions necessary for the Territory to progress.
59. Therefore, the Governor's Memorandum is entitled to consideration and to great weight.

Conclusions

1. The examination of a base rate petition should be a relatively straightforward process that simply requires the examination of the revenues and expenses forecasted for a test year, which in this case is FY2020.
2. The examination of a base rate petition does not require a review of 20 plus years of decisions made by the Authority and the Monday Morning Quarterbacking of the same.
3. It also requires the PSC consultants and staff to show the hearing examiner, after WAPA has presented its case, where they believe any of its expenses were not prudently incurred.
4. In this proceeding, the PSC consultants have griped about the costs of the Vitol contract without offering a scintilla of evidence that any of the Vitol costs were imprudently incurred at the time they were incurred.

5. Prior to the start of the evidentiary hearings, the PSC did not provide any pre-filed testimony in response to the testimony, Petition, Supplemental Petitions and the supporting documents filed by WAPA in the base rate case.
6. Nor have they challenged the prudence of WAPA's projected revenues or its other expenses besides those associated with the Vitol contract. In connection with its challenge to the Vitol costs the record before the Hearing Examiner is devoid of any substantive documentation of facts which undergirded the PSC's arguments at the hearing.
7. There is no regulatory basis for denying a municipal utility the ability to set its rates based on expected sales and expenses which have not been shown to be imprudent. *Oct. 22 Tr. p. 43.*
8. The Authority has done an excellent job of controlling its expenses over the last three years and the occurrence of two catastrophic hurricanes support its reduction in projected revenues.
9. The base rate increase sought by the Authority and the simultaneous LEAC rate reduction sought are both just and reasonable.
10. Once implemented, they will provide the Authority with a window of time in which to implement actions that will reduce its rates.
11. The PSC should heed the humble request of the Governor:

"Given all circumstances, the Virgin Islands Water and Power Authority and its ratepayers stand to benefit from the timely and affirmative action on its petition for Electric System Rate Relief. On behalf of the Government, I humbly request that the PSC facilitate this necessary step to be able to enjoy the progress that we are building into VIWAPA through our unprecedented level of investment."
12. The Hearing Examiner at the conclusion of the evidentiary hearing on October 24 asked the parties to address the following issues:

- a. Can WAPA recover through base rates the costs of the Vitol contract amendments? If not, then what additional steps can be taken to allow their recovery? Can the Hearing Examiner consider whether they are prudent?
- b. To the extent that PSC has denied the ability of WAPA to collect costs associated with the Vitol Contract amendments can the Hearing Examiner consider the recovery of those costs in base rates. Has WAPA waived the right to recover those costs?
- c. Can the Hearing Examiner conduct a prudency examination or analysis or is that outside of her scope?
- d. What are the logistics associated with triggering an automatic decrease in base rates tied to re-negotiation and reduction of the Vitol contract costs?

I. WAPA Can Recover Through Rates The Cost Of Vitol Contract Amendments

The costs largely flow from the initial contract itself. WAPA implemented a very aggressive construction schedule to deliver the benefits of the propane conversion to the Territory as soon as possible. It was in the best interest of its ratepayers than it do so. Other costs are addressed by a contract amendment, the first of which lengthens the period of payment for the Infrastructure Fee and reduces Vitol's profit potential from ten percent to eight percent. It is not disputed that the project was prudent and in the best interest of WAPA's owner-customers.

II. No Additional Steps Need Be Taken To Allow Recovery

The PSC technical consultants had every opportunity in the base rate case to attempt to establish that the expenses and revenues forecast for the test period were not prudent, or that the Vitol infrastructure costs should be disallowed. While they criticized aspects of the rate case, none

denied the incontrovertible proof of the Authority that had it not undertaken the propane project the price of fuel would have been greater due to a reliance on fuel oil. Moreover, once the Vitol costs are refinanced over a longer term at a lower interest rate, and eventually paid off, the ratepayers will see even lower fuel costs that can be reflected in lower rates.

III. The Hearing Examiner Can Consider The Recovery Of The Vitol Contract Costs In Base Rates.

The PSC at its June 12, 2019 meeting expressly conditioned progress of the rate case on completion of an audit of the Vitol Contract Infrastructure costs. That audit has been completed and presents no obstacle to the rate case proceeding. *See Exhibits CC and DD.* Furthermore, an assessment of the Vitol infrastructure was not excepted from the responsibility of the Hearing Examiner to make a recommendation on a base rate increase to the PSC. *See Hearing Examiner Exhibits HE-4 and HE-5.*

IV. There Has Been No Waiver Of Costs By WAPA.

It bears repeating that WAPA has not waived the receipt of rates to allow it to pay the full infrastructure cost of the Vitol project in order that it obtain title to the infrastructure costs. The PSC has consistently requested information related to the costs and the Authority has consistently sought to satisfy the demands of the PSC relating to the costs.

V. The Hearing Examiner Can Conduct A Prudency Examination In Order To Determine Whether The Vitol Contract Costs Should Be Considered Revenue Requirements.

Indeed, WAPA presented its evidence before the Hearing Examiner establishing why the Vitol Contract costs were prudent. They were uncontradicted by the PSC staff. It is the PSC staff, if anyone, that waived their opportunity to show imprudence at the time the contract was entered into. No such proof was provided because none exists. Faced with anticipated high fuel

oil prices and unsatisfactory air emissions WAPA moved swiftly and prudently to obtain a solution. It expressly recognized that certain costs were not anticipatable and were unknown. Nevertheless, it took a thoughtful calculated risk that paid off.

VI. The PSC Can Condition An Increase In Base Rates On An Automatic Decrease In Base Rates Caused By A Re-negotiation Of The Vitrol Contract Infrastructure Payments.

The PSC has the statutory power, at any time, to set WAPA's rates pursuant to 30 V.I.C. Section 1(c). It can also set an automatic trigger to reduce rates under certain well-defined circumstances or wait until a condition has occurred which indicates a need for a rate increase. WAPA is amenable to an automatic trigger reducing base rates provided it is based on real data as opposed to projected or forecasted results.

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Respectfully Submitted:



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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and exact copy of the foregoing Findings of Fact and Conclusions was served on the following via email on the 14th day of November, 2019

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